



## MODEL HEALTH INFORMATION EXCHANGE PARTICIPATION AGREEMENT

### PARTICIPANT

\_\_\_\_\_

[Address] \_\_\_\_\_

[City/State/Zip] \_\_\_\_\_

[Email] \_\_\_\_\_

[Phone] \_\_\_\_\_

[Fax] \_\_\_\_\_

### HEALTH INFORMATION EXCHANGE

\_\_\_\_\_

[Address] \_\_\_\_\_

[City/State/Zip] \_\_\_\_\_

[Email] \_\_\_\_\_

[Phone] \_\_\_\_\_

[Fax] \_\_\_\_\_

### **Background:**

1. \_\_\_\_\_ ("HIE") is a [non-profit organization/governmental organization] that owns and operates an Internet-based system that provides for secure electronic health information exchange (the "Exchange").

2. Participants in the Exchange include Health Care Providers that will receive Data through the Exchange and Data Suppliers that will provide Data. A Participant may be both a Health Care Provider and a Data Supplier. Participant is [check the applicable type]:

☐ **BOTH.** Participant is both a Health Care Provider and a Data Supplier.

☐ **HEALTH CARE PROVIDER.** Participant is a Health Care Provider that will participate in the Exchange to obtain health care information for a Permitted Use.

☐ **DATA SUPPLIER.** Participant is a Data Supplier that makes or will make clinical Data available for access by Health Care Providers and Authorized Users for a Permitted Use.

### **Agreement:**

1. **HIE Activity.** HIE will manage and administer the Exchange subject to the Terms and Conditions of this Agreement. HIE agrees to fulfill the obligations of Exchange as set forth in this Agreement, its Exhibits and Addenda.

### **MODEL HIE PARTICIPATION AGREEMENT FOR DATA SUPPLIERS AND HEALTH CARE PROVIDERS**

**REV. 4-18-08**

Arizona Health-e Connection (AzHEC), in conjunction with Coppersmith Gordon Schermer & Brockelman PLC, prepared this Model HIE Participation Agreement as a guide to organizations considering health information exchange arrangements. This document is intended for information only and does not constitute legal advice. Organizations should consult their own counsel for advice on HIE matters and agreements. This Model HIE Participation Agreement may be reproduced, in whole or in part, with attribution to Arizona Health-e Connection.

2. Participant Activity. Participant, in its capacity as a Health Care Provider and/or its capacity as a Data Supplier, as applicable, will participate in the transmission of Data through the Exchange ("Data Exchange") and the submission or use of such Data, as applicable, subject to this Agreement, its Exhibits and Addenda.

3. Complete Agreement. This Agreement includes, and incorporates by reference:

- 3.1 Exhibit A (Terms and Conditions);
- 3.2 Exhibit B (Security Requirements);
- 3.3 Exhibit C (Health Care Provider System Requirements);
- 3.4 Exhibit D (Data Supplier—Data Submission and System Requirements);
- 3.5 Exhibit E (HIPAA Business Associate Agreement);
- 3.6 Any Project Addendum attached to this Agreement and signed by the HIE and Participant; and
- 3.7 The HIE Policies and Standards found at [www.xxxx.xxxx](http://www.xxxx.xxxx).

4. Effective Date. The Effective Date for this Agreement is \_\_\_\_\_. The Agreement will continue until terminated as set forth in Exhibit A, Section 10.

**PARTICIPANT**

By: \_\_\_\_\_  
Its: \_\_\_\_\_

National Provider Identifier (if Participant is a Health Care Provider): \_\_\_\_\_

Date: \_\_\_\_\_

**HEALTH INFORMATION EXCHANGE**

By: \_\_\_\_\_  
Its: \_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT A**  
**TERMS AND CONDITIONS OF PARTICIPATION**

**1.0 DEFINITIONS**

Authorized User means an individual authorized by HIE or a Health Care Provider under this Agreement to use the Exchange to access Data for a Permitted Use.

Data means patient health information provided to HIE by Data Suppliers. For the purposes of this Agreement, Data means protected health information as defined by the Health Insurance Portability and Accountability Act (HIPAA) Standards for Privacy of Individually Identifiable Health Information, 45 C.F.R. Part 160 and Part 164, Subpart E, and the HIPAA Security Standards, 45 C.F.R. Part 160 and Part 164, Subpart C, both as amended from time to time.

Data Exchange means electronically providing or accessing Data through the Exchange.

Data Supplier means an organization, such as a hospital, physician clinical laboratory, pharmacy claims aggregation company, governmental agency or otherwise that makes Data available for access through the Exchange and has entered into a HIE Participation Agreement. A Data Supplier also may be a Health Care Provider.

Health Care Provider means a physician, group practice, hospital or health system, or other health care organization or professional that provides treatment to Patients and has entered into a HIE Participation Agreement. A Health Care Provider also may be a Data Supplier and an Authorized User.

Patient means an individual receiving treatment or health care services from a Health Care Provider.

Participant means a Health Care Provider and/or Data Supplier that has entered into a HIE Participation Agreement, including the Participant named as a party to this Agreement.

Permitted Use is the reason or reasons for which Participants and Authorized Users may access Data in the Exchange. For the purpose of this Agreement, Permitted Use is defined in the Project Addenda.

Project Addendum means an exhibit to this Agreement, signed by the HIE and Participant, that describes a specific project for use of the Exchange, the Permitted Use, applicable standards and safeguards, and related terms. Future projects, phases or expanded use of the Exchange also will be set forth in Project Addendum signed by HIE and Participant.

**2.0 HIE OBLIGATIONS**

**2.1 Services Provided by HIE.**

(a) Exchange Operation. HIE will maintain and operate the Exchange. HIE may contract with subcontractors to maintain and operate the Exchange or to provide support services. HIE will require that its subcontractors comply with the applicable terms and conditions of this Agreement.

(b) Access to Exchange for Permitted Use. HIE will make the Exchange available to Participants, including: (i) Health Care Providers that may access Data through the Exchange only for a Permitted Use; and (ii) Data Suppliers that provide Data for access by Health Care Providers through the Exchange. HIE may establish arrangements with other health information exchanges to allow Health Care Providers access to additional Data for a Permitted Use. Any change to a Permitted Use must be documented in an Addendum and signed by the parties.

(c) Exchange Availability. HIE will make all reasonable efforts to make the Exchange available to Participants 24 hours a day, 7 days a week; however, the Exchange availability may be temporarily suspended for maintenance or unscheduled interruptions. HIE will use its best efforts to provide reasonable advance notice of any such suspension or interruptions of Exchange availability and to restore Exchange availability. Health Care Providers are responsible for securing patient health information through other means during any periods when the Exchange is not available.

(d) Support Services. During the term of this Agreement, HIE will provide support services to assist Participant in the installation, implementation, and maintenance of the software and use of the Exchange and may establish a fee schedule for these services which will be posted at [www.xxx.xxx](http://www.xxx.xxx). The Exchange help desk will be available at the number and for the hours set forth at [www.xxx.xxx](http://www.xxx.xxx). All support services will be subject to the HIE budget for such services.

## 2.2 HIE Records; Use of Data.

(a) HIE Records. HIE will maintain records of the date, time and records accessed by a Health Care Provider in each Data Exchange as set forth in its Policies and Standards described in Section 2.3. HIE will not maintain, and will not be responsible for maintaining, records of the content of any Data Exchange or inspecting the content of Data.

(b) HIE Use and Disclosure of Information. HIE will not disclose Data or information relating to Data Exchanges to third parties except: (i) as provided by this Agreement; (ii) as required by law or subpoena; or (iii) as directed in writing by the originating party or intended recipient. HIE may access Data and information relating to Data Exchanges only for the operation of the Exchange, testing, performance verification, and investigations and actions relating to compliance with this Agreement, HIE Policies and Standards and applicable laws and regulations.

2.3 Policies and Standards. HIE will establish policies and standards (respectively, "Policies and Standards") that will govern HIE's and Participant's activity on the Exchange, and these Policies and Standards will be available at [www.xxx.xxx](http://www.xxx.xxx). HIE encourages Participant to provide input in the development of Policies and Standards through HIE working groups and committees. These Policies and Standards govern HIE and Participant use of the Exchange and the use, submission, transfer, access, privacy and security of Data.

(a) Changes to Policies and Standards. HIE may change or amend the Policies and Standards from time to time at its discretion and will post notice of proposed and final changes at [www.xxx.xxx](http://www.xxx.xxx). HIE will provide Participants notice of such changes to Policies and Standards by electronic mail. Any changes will be effective 60 days following adoption by HIE, unless HIE determines that an earlier effective date is required to address a legal requirement, a concern relating to the privacy or security of Data or an emergency situation. HIE also may postpone the effective date of a change if the HIE determines, in its sole discretion, that additional implementation time is required. Participant will have no ownership or other property rights in the Policies and Standards or other materials or services provided by HIE.

(b) Security. HIE will implement Policies and Standards that are reasonable and appropriate to provide that all Data Exchanges are authorized, and to protect Data from improper access, tampering or unauthorized disclosure. Such Policies and Standards will include administrative procedures, physical security measures, and technical security services that are reasonably necessary to secure the Data. HIE and Participant will comply with the security Policies and Standards established by HIE, including the requirements set forth on Exhibit B.

(c) Investigations and Corrections. HIE will adopt Policies and Standards for the investigation and resolution of Patient complaints, security incidents or other concerns relating to compliance with this Agreement, HIE Policies and Standards and applicable laws and regulations (“Compliance Concerns”). HIE promptly will notify Participant in writing of any Compliance Concern related to Participant’s use of the Exchange, and Participant will cooperate with HIE in its investigation of any Compliance Concern and corrective action.

**3.0 HEALTH CARE PROVIDER OBLIGATIONS.** The obligations of this Section 3.0 apply to Participant if either the “Both” or the “Health Care Provider” line is checked on page 1 of the Agreement. These obligations do not apply to Participants who have only checked the “Data Supplier” line on page 1.

3.1 Data Exchange. By engaging in Data Exchange, Health Care Provider agrees that its participation in any Data Exchange, and use of the Exchange by Health Care Provider and its Authorized Users, will comply with the terms of this Agreement and applicable laws and regulations. Health Care Provider also agrees that Health Care Provider has secured any required Patient authorizations to access the Data Exchange as set forth in Section 3.4.

3.2 Permitted Use. Health Care Provider and its Authorized Users will use the Exchange only for a Permitted Use. Health Care Provider and its Authorized Users will comply with this Agreement and all applicable laws and regulations governing the privacy and security of Data received through the Exchange. Data obtained by Health Care Provider through the Exchange may become part of Health Care Provider’s medical record. If Health Care Provider includes Data in its medical record, Health Care Provider and Authorized Users may use Data only for those purposes permitted by law. Health Care Provider will decide in its discretion whether to use the Exchange, and to what extent.

3.3 Authorized Users. Health Care Provider will identify and authenticate its Authorized Users, in accord with HIE’s Policies and Standards, who may use the Exchange for the Permitted Use on behalf of Health Care Provider. Authorized Users will include only those individuals who require access to the Exchange to facilitate Health Care Provider’s use of the Data for a Permitted Use. Participant is

responsible for Authorized Users complying with the terms and conditions of this Agreement and applicable laws and regulations.

3.4 Patient Consent for Data Exchange and Treatment; Notice. The parties acknowledge that certain uses of Data, including without limitation Treatment, Payment and certain Health Care Operations (as defined by the HIPAA Standards for Privacy of Individually Identifiable Health Information, 45 C.F.R. Part 164, Subpart E) do not require specific consent by a Patient under HIPAA or Arizona Law. However, Health Care Provider is responsible for securing any Patient consent to access to Patient's Data through the Exchange as required by HIE Policies and Standards, as identified in a Project Addendum, or as otherwise required by law.

3.5 System Operations.

(a) Systems Necessary to Participate in Exchange. Health Care Provider, at its own expense, will provide and maintain the equipment, software, services and testing necessary to effectively and reliably participate in the Exchange as set forth in Exhibit C, except for such software expressly provided by HIE pursuant to Section 8.

(b) Documentation of Information for Patient Treatment; Record Retention, Storage and Backup. Health Care Provider, at its own expense, will maintain records of Data accessed through the Exchange and used by Health Care Provider for Patient Treatment. Health Care Provider will maintain these records for all periods required by law. Health Care Provider will determine the form for such records, which may include incorporation of Data into Health Care Provider's medical record electronically, by hard copy or by other form of summary, notation or documentation.

(c) Privacy, Security and Accuracy. Health Care Provider will maintain sufficient safeguards and procedures, in compliance with Exhibit B, HIE Policies and Standards, and applicable laws, to maintain the security and privacy of Data.

**4.0 DATA PROVIDER OBLIGATIONS.** The obligations of this Section 4.0 apply to Participant if either the "Both" or the "Data Supplier" line is checked on page 1 of the Agreement. These obligations do not apply to Participants who have only checked the "Health Care Provider" line on page 1.

4.1 Data Exchange and Data Submission. By engaging in Data Exchange, Data Supplier agrees that: (a) its participation in any Data Exchange will comply with the terms of this Agreement and applicable laws and regulations; (b) the Data provided or transferred by Data Supplier can be related to and identified with source records maintained by Data Supplier; and (c ) Data Supplier has secured all authorizations for the submission of Data as set forth in Section 4.3. Data Supplier will make Data available for the Exchange in accordance with the scope, format and specifications set forth in Exhibit D.

4.2 Permitted Use. Data Supplier and its employees and agents will use the Exchange only to provide Data for a Permitted Use. Data Supplier, its employees and agents will comply with this Agreement and all applicable laws and regulations governing the privacy and security of Data made available to the Exchange.

4.3 Patient Consent for Data Submission and Data Exchange. Data Supplier and HIE acknowledge that Data Supplier will make Data available for access through the Exchange only for a Permitted Use. The parties acknowledge that certain uses of Data, including without limitation Treatment, Payment and certain Health Care Operations (as defined by the HIPAA Standards for Privacy of Individually Identifiable Health Information, 45 C.F.R. Part 164, Subpart E) do not require specific consent by a Patient under HIPAA or Arizona Law for these purposes. However, Data Supplier is responsible for securing any consent to supply Patient's Data to the Exchange as required by HIE Policies and Standards, as identified in a Project Addendum, or as otherwise required by law. Exchange

4.4 Data Return. HIE is not required to return to Data Supplier any Data transferred or accessed pursuant to the terms of this Agreement.

4.5 Data Provided; System Operations.

(a) Systems Necessary to Participate in Exchange. Data Supplier will provide and maintain the equipment, software, services and testing necessary to effectively and reliably submit Data for access through the Exchange as set forth in Exhibit D, except for such software expressly provided by HIE pursuant to Section 8. The financial responsibility of Data Supplier and HIE in making such Data available and for providing and maintaining the equipment, software, services and testing are set forth in Exhibit D.

(b) Record Retention, Storage and Backup. Data Supplier, at its own expense, will maintain Data backup and retention to maintain adequate records of Data submitted to the Exchange for access by Health Care Providers.

(c) Privacy, Security and Accuracy. Data Supplier will maintain sufficient safeguards and procedures, in compliance with the terms of this Agreement, HIE Policies and Standards, and applicable laws, to maintain the security, privacy and accuracy of Data. Data Supplier will promptly correct any errors discovered in Data it transmits to Exchange and notify HIE of any such corrections pursuant to HIE Policies and Standards.

## 5.0 COMPLIANCE WITH LAWS; CONFIDENTIALITY

Both HIE and Participant, and their agents and employees, will comply with the federal and state laws and regulations applicable to this Agreement, including without limitation laws on the security and privacy of Data, Patient consent for the use and transfer of Data and requirements for Data Exchanges. HIE and Participant, and their agents and employees, will maintain the confidentiality of Data as required by state and federal law. HIE's use of Data will be subject to this Agreement and the Business Associate Agreement set forth in Exhibit E.

## 6.0 FEES AND PAYMENT

6.1 Fees. Participant will pay a program fee ("Fee") to HIE in the amount of \_\_\_\_\_ (\$\_\_\_\_\_) per **calendar quarter/ per month**. If this Agreement is in effect for part of a quarter/month, the Fee will be prorated on a daily basis. HIE may modify the Fee from time to time, but

such modification will not become effective until Participant has received at least 60 days advance written notice of such modification. Such notice will specify the effective date of the modified Fee.

6.2 Payment. The Fee shall be payable in advance on or before the fifth day of each quarter/month. After 15 days, such payments shall accrue interest at the lesser of 1% per month or the highest rate allowed by applicable law.

## **7.0 PROPRIETARY INFORMATION**

During the term of this Agreement, each party may have access to information about the other party that: (a) relates to past, present or future business activities, practices, protocols, products, services, information, content, and technical knowledge; and (b) has been identified as confidential ("Proprietary Information") by such party. For the purposes of this provision, Proprietary Information will not include Data.

7.1 Non-disclosure. The parties will: (a) hold Proprietary Information in strict confidence; (b) not make the Proprietary Information available for any purpose other than as specified in the Agreement or as required by law or subpoena; and (c) take reasonable steps to ensure that the Proprietary Information is not disclosed or distributed by employees, agents or consultants (who will have access to the same only on a "need-to-know basis) to third parties in violation of this Agreement.

7.2 Exclusions. Proprietary Information shall not include information that: (a) at the time of disclosure, is known or becomes known or available to general public through no act or omission of the receiving party; (b) was in the receiving party's lawful possession before it was provided to the receiving party by the disclosing party; (c) is disclosed to the receiving party by a third party having the right to make such disclosure; or (d) is independently developed by the receiving party without reference to the disclosing party's Proprietary Information.

7.3 Equitable Remedies. The parties agree that a breach of this Section will cause the disclosing party substantial and continuing damage, the value of which will be difficult or impossible to ascertain, and other irreparable harm for which the payment of damages alone shall be inadequate. Therefore, in addition to any other remedy that the disclosing party may have under this Agreement, at law or in equity, in the event of such a breach or threatened breach by the receiving part of the terms of this Section, the disclosing party shall be entitled, after notifying the receiving party in writing of the breach or threatened breach, to seek both temporary and permanent injunctive without the need to prove damage or post bond.

## **8.0 SOFTWARE LICENSE**

HIE grants to Participant for the term of this Agreement a royalty-free, non-exclusive, nontransferable, non-assignable, non-sub-licensable, and limited right to use the software identified by HIE in its technical operation Standards for the sole purpose of participating in the Exchange under the terms and conditions of this Agreement ("**Software**"). THE SOFTWARE SHALL NOT BE USED FOR ANY OTHER PURPOSE WHATSOEVER, AND SHALL NOT OTHERWISE BE COPIED OR INCORPORATED INTO ANY OTHER COMPUTER PROGRAM, HARDWARE, FIRMWARE OR PRODUCT. THE SOFTWARE IS LICENSED"AS



IS" AND HIE DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES OF ANY KIND, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR TITLE. Participant acknowledges that the Software may have been licensed to HIE by third parties, and that the license granted under this Agreement is subject in every respect to HIE's grant of license from such third parties. As additional software is developed by or for HIE for the Exchange, it shall become subject to this Agreement upon written notice to Participant, and such notice shall constitute an amendment to this Agreement and any the applicable Project Addendum. This Section 8.0 applies only to Software that is installed on hardware owned or leased by Participant and not to any other software that Participant may use in providing treatment to Patients or for Participant's business operations.

## **9.0 ELECTRONIC SIGNATURES**

9.1 Signatures and Signed Documents. Participant, at HIE's request, will adopt as its signature an electronic identification consisting of symbols or codes that are to be affixed to or contained in a Data Exchange made by the Participant ("Signatures"). Participant agrees that any Signature of such party affixed to or contained in any Data Exchange will be sufficient to verify that the party originated such Data Exchange. Any properly transmitted Data Exchange made pursuant to this Agreement shall be considered a "writing" or "in writing" and any such Data Exchange when containing, or to which there is affixed, a Signature ("Signed Documents") shall be deemed for all purposes: (a) to have been "signed;" and (b) to constitute an original when printed from electronic files or records established and maintained in the normal course of business.

9.2 Validity of Signed Documents. Participant will not contest the validity or enforceability of Signed Documents under the provisions of any applicable law relating to whether certain agreements are to be in writing or signed by the party to be bound thereby. Signed Documents, if introduced as evidence on paper in any judicial, arbitration, mediation, or administrative proceedings will be admissible as between the parties to the same extent and under the same condition as other business records originated and maintained in paper form.

## **10.0 TERM AND TERMINATION**

10.1 Term and Termination. The term of this Agreement will begin on the Effective Date and will continue until terminated as set forth in this Section 10. This Agreement will terminate under any of the following circumstances:

(a) Violation of Law or Regulation. If either HIE or Participant determines that its continued participation in this Agreement would cause it to violate any law or regulation applicable to it, or would place it at material risk of suffering any sanction, penalty, or liability, then that party may terminate its participation in this Agreement immediately upon written notice to the other party.

(b) For Cause. If HIE or Participant determines that the other party or any of its employees, agents or contractors have breached this Agreement, then that party may terminate its participation in this Agreement on 30 days' advance written notice to the other party, provided that such notice identifies such area of non-compliance, and such non-compliance is not cured within 15 days of receipt of the notice of non-compliance. HIE may immediately terminate this Agreement upon

written notice to Participant if HIE determines that Participant, an Authorized User, employee or agent has used Data or the Exchange for any purpose other than the Permitted Use or in violation of security or privacy provisions under this Agreement or applicable laws and regulations.

(c) Without Cause. HIE or Participant may terminate this Agreement without cause upon 30 days' advance written notice of termination to the other party.

10.2 Termination Process and Access to Exchange and Data. Upon the effective date of termination of this Agreement, HIE will cease providing access to the Exchange for the Participant and its Authorized Users, and Participant and its Authorized Users will stop using the Exchange.

### 10.3 Effect of Termination.

(a) Rights and Duties. Any termination will not alter the rights or duties of the parties with respect to Signed Documents transmitted before the effective date of the termination or with respect to fees outstanding and payable under this Agreement. Upon termination of this Agreement, Exhibit A, Sections 7.0, 8.0, 10.2, 10.3(b), 11, 12, Exhibit E and any other obligations that by their nature extend beyond termination, cancellation or expiration of this Agreement, will survive such termination, cancellation or expiration and remain in effect.

(b) Return of Proprietary Information; Software; Fees. Within 30 days of the effective date of termination, each party will return to the other all Proprietary Information belonging to the other or certify the destruction of such Proprietary Information if agreed to by the party who originated the Proprietary Information. Within 30 days of the effective date of termination, Participant will de-install and return to HIE all software provided by HIE to Participant under this Agreement. If Participant has prepaid any Fees or Expenses as of the effective date of termination, Participant will be entitled to a pro rata refund of such advance payment. No Data will be returned to a Data Supplier upon termination of this Agreement.

## 11.0 LIMITED WARRANTIES AND DISCLAIMERS

11.1 Limited Warranty and Disclaimer of Other Warranties. HIE will use its best efforts to correctly transmit Data Exchanges between Participants on a timely basis. HIE MAKES NO REPRESENTATION OR WARRANTY THAT THE DATA DELIVERED TO THE PARTICIPANT WILL BE CORRECT OR COMPLETE. HIE MAKES NO WARRANTY OR REPRESENTATION REGARDING THE ACCURACY OR RELIABILITY OF ANY INFORMATION TECHNOLOGY SYSTEM USED FOR THE EXCHANGE. **HIE DISCLAIMS ALL WARRANTIES REGARDING ANY PRODUCT, SERVICES, OR RESOURCES PROVIDED BY IT, OR DATA EXCHANGES TRANSMITTED, PURSUANT TO THIS AGREEMENT INCLUDING WITHOUT LIMITATION ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.**

## 12.0 LIMITATION OF LIABILITY; INDEMNIFICATION

12.1 Limitation of Liability. Neither HIE nor Participant will be liable to the other for lost profits or Data, or any special, incidental, exemplary, indirect, consequential or punitive damages (including loss of use or lost profits) arising from any delay, omission or error in a Data Exchange or receipt of Data, or arising out of or in connection with this Agreement, whether such liability arises from

any claim based upon contract, warranty, tort (including negligence), product liability or otherwise, and whether or not either party has been advised of the possibility of such loss or damage.

12.2 Release of Liability. Participant releases HIE from any claim arising out of any inaccuracy or incompleteness of Data or any delay in the delivery of Data or failure to deliver a Data Exchange when requested except for those arising out of HIE's gross negligence.

12.3 Indemnification.

(a) HIE Indemnification for Infringement. HIE will indemnify and hold harmless Participant, its employees and agents from any damages, expenses and costs, including reasonable attorneys fees, arising out of claims by third parties that the use of the Exchange and any Software provided by HIE infringes any patents, copyrights or trademarks or is a misappropriation of trade secrets, provided that Participant notifies HIE in writing promptly upon discovery of any such claim and gives HIE complete authority and control of, and full cooperation with, the defense and settlement of such claim.

(b) Indemnification for Breach of Agreement. Participant will indemnify and hold harmless HIE, its employees and agents from any damages, expenses and costs, including reasonable attorneys fees, from claims by third parties arising from claims arising from Participant's or its Authorized Users' breach of this Agreement, including the unauthorized or improper use of the Exchange or Participant's or its Authorized Users' use or disclosure of Data for any purpose other than a Permitted Use. HIE will indemnify and hold harmless Participant, its employees and agents from any damages, expenses and costs, including reasonable attorneys fees, from claims by third parties arising from claims arising from HIE's breach of this Agreement, including the unauthorized or improper use of the Exchange or HIE's use or disclosure of Data for any purpose other than a Permitted Use or as otherwise allowed under this Agreement.

12.4 Not a Medical Service. The Exchange does not make clinical, medical or other decisions and is not a substitute for professional medical judgment applied by Participant or its Authorized Users. Participant and its Authorized Users are solely responsible for confirming the accuracy of all Data and making all medical and diagnostic decisions.

## 13.0 GENERAL PROVISIONS

13.1 No Exclusion. HIE represents and warrants to Participant, and Participant represents and warrants to HIE, that neither party nor their respective employees or agents have been placed on the sanctions list issued by the office of the Inspector General of the Department of Health and Human Services pursuant to the provisions of 42 U.S.C. 1320a(7), have been excluded from government contracts by the General Services Administration or have been convicted of a felony or any crime relating to health care. HIE and Participant will provide one another immediate written notice of any such placement on the sanctions list, exclusion or conviction.

13.2 Severability. Any provision of this Agreement that is determined to be invalid or unenforceable will be ineffective to the extent of such determination without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of such remaining provisions.

13.3 Entire Agreement. This Agreement constitutes the complete agreement of the parties relating to the matters specified in this Agreement and supersedes all earlier representations or agreements, whether oral or written with respect to such matters. No oral modification or waiver of any of the provisions of this Agreement is binding on either party.

13.4 No Assignment. Neither HIE nor Participant may assign its rights or obligations under this Agreement without the advance written consent of the other party, except for a transfer or assignment to a parent, subsidiary or affiliate wholly owned by the party.

13.5 Governing Laws. This Agreement is governed by and interpreted in accordance with Arizona laws, without regard to its conflict of law provisions. The parties agree that jurisdiction over any action arising out of or relating to this Agreement shall be brought or filed in the State of Arizona.

13.6 Force Majeure. No party is liable for any failure to perform its obligations under this Agreement, where such failure results from any act of God or other cause beyond such party's reasonable control (including, without limitation, any mechanical, electronic, or communications failure).

13.7 Notices. All notices, requests, demands, and other communications required or permitted under this Agreement will be in writing. A notice, request, demand, or other communication will be deemed to have been duly given, made and received: (a) when personally delivered; (b) on the day specified for delivery when deposited with a courier service such as Federal Express for delivery to the intended addressee; or (c) three business days following the day when deposited in the United States mail, registered or certified mail, postage prepaid, return receipt requested, addressed as set forth below on the first page of the Agreement. Nothing in this section will prevent the parties from communicating via electronic mail, telephone, facsimile, or other forms of communication for the routine administration of the Exchange.

13.8 No Agency. HIE provides the Exchange services to Participant but does not act as Participant's agent. Participant will not be deemed an agent of another Participant as a result of participation in this Agreement.

13.9 No Relationship between Participating Health Care Providers; No Third Party Rights. Nothing in this Agreement confers any rights or remedies under this Agreement on any persons other than HIE and Participant, and nothing in this Agreement is intended to create a contractual relationship or otherwise affect the rights and obligations among Participants. Nothing in this Agreement will give any third party, including other Participants, any right of subrogation or action against any party to this Agreement.

**END OF EXHIBIT A**

## **EXHIBIT B**

### **PARTICIPANT SECURITY REQUIREMENTS**

In addition to any obligations set forth in the Agreement and HIE Policies and Standards, Participant will observe the following requirements. HIE may amend or supplement these requirements on written notice to Participant.

1. Each of Participant's servers connecting to the HIE gateway will comply with HIE's authentication requirements, implementing Secure Sockets Layer (SSL) encryption and authentication, using certificates approved by HIE.
2. Participant will implement authentication of each Authorized User at the point of access and will implement password policies based on prevailing industry standards and HIE Policies and Standards. Participant may elect to implement stronger authentication mechanisms at its discretion.
3. Participant will authorize each Authorized User based on a Permitted Use of the Exchange and according to Role Based Access principles. Participant will impose appropriate sanctions for members of its workforce that violate applicable security Policies and Standards or make improper use of the Exchange, including revocation of an Authorized User's authorization to access the Exchange as may be appropriate under the circumstances.
4. Participant will maintain access logs that capture end user identification information.
5. Participant will review and update its list of Authorized Users as required under HIE Policies and Standards.
6. Participant will implement message-level security using WS-Security or other security technology acceptable to HIE.
7. Participant will implement firewalls and intrusion detection per industry standards and Exchange Policies and Standards.
8. Participant will implement other safeguards to protect servers based on information security best practices, such as the SANS Institute ([www.sans.org](http://www.sans.org)) recommendations. .
9. Participant will perform periodic automated and random manual review and verification of audit logs for both operational monitoring and system security as required by HIE Policies and Standards.

**END OF EXHIBIT B**

## **EXHIBIT C**

### **HEALTH CARE PROVIDER—SYSTEM REQUIREMENTS**

1. **System Requirements.**

HIE will provide a secure viewer application to Health Care Providers to retrieve and view Data for their Patients. The secure viewer application is web-based and requires a secure system with an Internet connection and an Internet browser. HIE requires the following minimum system configuration options for running the HIE viewer on a browser.

***[Insert specific system requirements]***

2. **Additional Financial Requirements.**

***[Insert Additional Financial Requirements supplementing Exhibit A, Section 3]***

3. **Maintenance and Support Requirements.**

***[Insert Maintenance and Support Requirements]***

**END OF EXHIBIT C**

## **EXHIBIT D**

### **DATA SUPPLIER—DATA SUBMISSION, SYSTEM REQUIREMENTS AND FINANCIAL RESPONSIBILITIES**

#### **1. Data Provided.**

Data Supplier will submit Data as set forth in the Addenda.

Data submitted shall be mapped to HIE standard terminologies and code systems according to the message specifications. HIE may provide message specifications and terminology standards as a reference when creating data maps. HIE and Data Supplier will cooperate with each other to mutually validate the data maps created.

#### **2. System Requirements.**

***[Insert System Requirements]***

#### **3. Financial Responsibilities.**

***[Insert Financial Responsibilities]***

#### **4. Maintenance and Support Requirements.**

***[Insert Maintenance and Support Requirements]***

**END OF EXHIBIT D**

## **EXHIBIT E**

### **BUSINESS ASSOCIATE AGREEMENT**

HIE and Participant agree to the terms and conditions of this Business Associate Agreement in order to comply with the use and handling of Protected Health Information (“PHI”) under the HIPAA Standards for Privacy of Individually Identifiable Health Information, 45 C.F.R. Part 160 and Part 164, Subpart E (“Privacy Rule”) and the HIPAA Security Standards, 45 C.F.R. Part 160 and Part 164, Subpart C (“Security Rule”), both as amended from time to time. Unless otherwise provided, all capitalized terms in this Business Associate Agreement will have the same meaning as provided under the Privacy Rule and Security Rule.

For purposes of this Business Associate Agreement, Protected Health Information (“PHI”) or Electronic Protected Health Information (“ePHI”) includes only individually identifiable health information handled by HIE that is provided to the Exchange by Participant.

1. **USES AND DISCLOSURES OF PHI:** HIE will use or disclose PHI only for those purposes necessary to perform Services under the Agreement, or as otherwise expressly permitted in the Agreement, its Exhibits including this Business Associate Agreement, or its Addenda, or as required by law, and will not further use or disclose PHI. HIE agrees that anytime it provides PHI to a subcontractor or agent to perform Services, HIE first will ensure that each such subcontractor or agent agrees to the same terms, conditions, and restrictions on the use and disclosure of PHI as contained in this Business Associate Agreement.

2. **HIE USE OR DISCLOSURE OF PHI FOR ITS OWN PURPOSES:** HIE may use or disclose PHI for HIE’s management and administration, or to carry out its legal responsibilities. HIE may disclose PHI to a third party for such purposes if: (1) The disclosure is required by law; or (2) HIE secures written assurance from the receiving party that the receiving party will: (i) hold the PHI confidentially; (ii) use or disclose the PHI only as required by law or for the purposes for which it was disclosed to the recipient; and (iii) notify the HIE of any breaches in the confidentiality of the PHI. HIE also may aggregate the PHI with other PHI in its possession or otherwise de-identify PHI according to the requirements of 45 C.F.R. §164.514(b).

3. **SAFEGUARDS:** HIE will implement and maintain appropriate safeguards to prevent any use or disclosure of PHI for purposes other than those permitted by this Business Associate Agreement. HIE also will implement administrative, physical and technical safeguards to protect the confidentiality, integrity, and availability of any ePHI that HIE creates, receives, maintains, and transmits on behalf of Participant.

4. **UNAUTHORIZED USES OR DISCLOSURES:** HIE will report to Participant any successful unauthorized access, use, disclosure, modification, or destruction of ePHI or interference with system operations in an information system containing ePHI of which HIE



becomes aware within 15 business days of HIE's learning of such event. HIE will report the aggregate number of unsuccessful attempts to access, use, disclose, modify, or destroy ePHI or interfere with system operations in an information system containing ePHI of which HIE becomes aware, provided that such reports will be provided only as frequently as the parties mutually agree, but no more than once per month. If the definition of "Security Incident" under the Security Rule is amended to remove the requirement for reporting "unsuccessful" attempts to use, disclose, modify or destroy ePHI, HIE will cease reporting unauthorized attempts as of the effective date of such amendment.

5. INDIVIDUAL ACCESS TO PHI: If an individual makes a request to HIE for access to PHI, HIE will within 10 business days forward such request in writing to Participant. Participant will be responsible for making all determinations regarding the grant or denial of an individual's request for PHI and HIE will make no such determinations.

6. AMENDMENT OF PHI: If an individual makes a request to HIE for amendment of PHI, HIE will within 10 business days forward such request in writing to Participant. Participant will be responsible for making all determinations regarding amendments to PHI and HIE will make no such determinations.

7. ACCOUNTING OF DISCLOSURES OF PHI: If an individual makes a request to HIE for an accounting of disclosures of PHI, HIE will within 10 business days forward such request in writing to Participant. Participant will be responsible for preparing and delivering the accounting to the individual. Upon request, HIE will make available to Participant information about HIE's disclosures of PHI, if any, that must be included to respond to individual requests for accounting of disclosures of PHI under applicable law.

8. ACCESS TO BOOKS AND RECORDS: HIE will make its internal practices, books and records on the use and disclosure of PHI available to the Secretary of the Department of Health and Human Services to the extent required for determining Participant's compliance with the Privacy Rule. Notwithstanding this provision, no attorney-client, accountant-client or other legal privilege will be deemed waived by HIE or Participant as a result of this Section.

9. TERMINATION: Participant may terminate the Agreement upon written notice to HIE if HIE breaches a material term of this Business Associate Agreement and HIE fails to cure the breach within 30 days of the date of notice of the breach.

10. RETURN OR DESTRUCTION OF PHI: Participant understands that PHI provided to the Exchange may be integrated into the medical record of Health Care Providers that access the Exchange. As such, it is not feasible for HIE to return or destroy PHI upon termination of the Agreement. HIE agrees to follow the provisions of this Business Associate Agreement for as long as it retains PHI, and will limit any further use or disclosure of PHI to those purposes allowed under this Business Associate Agreement, until such time as HIE either returns or destroys the PHI.

**END OF EXHIBIT E**

**MODEL HIE PARTICIPATION AGREEMENT  
FOR DATA SUPPLIERS AND HEALTH CARE PROVIDERS**

**REV. 4-18-08**

**PROJECT ADDENDUM NO. 1**

Project Name	Health Information Exchange for Treatment Purposes
Data Submitted for Exchange	
Permitted Uses	Health Care Provider and Authorized Users may access the Exchange to obtain Data for the Treatment (as defined in this Addendum) of Health Care Provider's Patients. If Health Care Provider includes Data in its Medical Record, Health Care Provider and Authorized Users may use Data only for those purposes permitted by law.
Permitted Users	Authorized Users are employees, independent contractors or agents of a Health Care Provider who have been authenticated and given access in compliance with HIE Policies & Standards by the Participant.
Specific Safeguards and Privacy Requirements	All Participants shall adhere to the HIE Policies and Standards available at <a href="http://www.xxx.xxx">www.xxx.xxx</a> .
Licensed Software	
Certification Requirements	
Definitions for Project Addendum No. 1	<ol style="list-style-type: none"><li>1. <b>"Treatment"</b> means the provision, coordination or management of health care services by one or more Health Care Providers, as defined by HIPAA Standards for Privacy of Individually Identifiable Health Information, 45 C.F.R. Part 164, Subpart E.</li><li>2. <b>"Medical Record"</b> means all communications related to a Patient's physical or mental health or condition that are recorded in any form or medium and that are maintained by the Health Care Provider for purposes of Patient diagnosis or Treatment, including medical records that are prepared by the Health Care Provider or other providers, as defined by A.R.S. § 12-2291.</li></ol>

**END OF ADDENDUM NO. 1**